

## Bureau of Prisons, Justice

## § 527.31

a CIM case. Inmates identified as Witness Security cases may choose to address their concerns directly to the Inmate Monitoring Section, Central Office, rather than use the Administrative Remedy Program.

### PART 527—TRANSFERS

#### Subparts A–C [Reserved]

#### Subpart D—Transfer of Inmates to State Agents for Production on State Writs

Sec.

527.30 Purpose and scope.

527.31 Procedures.

#### Subpart E—Transfer of Offenders To or From Foreign Countries

527.40 Purpose and scope.

527.41 Definitions.

527.42 Limitations on transfer of offenders to foreign countries.

527.43 Notification of Bureau of Prisons inmates.

527.44 Transfer of Bureau of Prisons inmates to other countries.

527.45 Transfer of State prisoners to other countries.

527.46 Receiving United States citizens from other countries.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100–4115, 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 4201–4218, 5003, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

#### Subparts A–C [Reserved]

#### Subpart D—Transfer of Inmates to State Agents for Production on State Writs

SOURCE: 46 FR 34549, July 1, 1981, unless otherwise noted.

##### § 527.30 Purpose and scope.

The Bureau of Prisons will consider a request made on behalf of a state or local court that an inmate be transferred to the physical custody of state or local agents pursuant to state writ of habeas corpus *ad prosequendum* or *ad testificandum*. The Warden at the institution in which the inmate is confined

is authorized to approve this transfer in accordance with the provisions of this rule.

##### § 527.31 Procedures.

(a) These procedures apply to state and federal inmates serving sentences in federal institutions, and shall be followed prior to an inmate's transfer to state or local agents other than through the Interstate Agreement on Detainers.

(b) The Warden shall authorize transfer only when satisfied that the inmate's appearance is necessary, that state and local arrangements are satisfactory, that the safety or other interests of the inmate (such as an imminent parole hearing) are not seriously jeopardized, and that federal interests, which include those of the public, will not be interfered with, or harmed. Authorization may not be given where substantial concern exists over any of these considerations.

(c) The request for transfer of custody to state agents shall be made by the prosecutor or other authority who acts on behalf of the court and shall be directed to the Warden of the institution in which the inmate is confined. The request shall be made by letter. The request shall indicate the need for appearance of the inmate, name of the court, nature of the action, date of the requested appearance, name and phone number of the state agency or other organization with responsibility for transporting the inmate, the name and location where the inmate will be confined during legal proceedings, and anticipated date of return. For civil cases, the request shall also indicate the reason that production on writ is necessary and some other alternative is not available. The applying authority shall provide either at the time of application or with the agent assuming custody, a statement signed by an authorized official that state or local officials with custody will provide for the safekeeping, custody, and care of the inmate, will assume full responsibility for that custody, and will return the inmate to Bureau of Prisons' custody promptly on conclusion of the inmate's appearance in the state or local proceedings for which the writ is issued.

## § 527.40

## 28 CFR Ch. V (7–1–07 Edition)

(d) A certified copy of the writ (one with the Seal of the Court) must be received at the institution prior to release of the inmate. Institution staff shall verify the authenticity of the writ.

(e) Institution staff shall maintain contact with the state or local law enforcement agency with responsibility for transfer of the inmate to determine the exact date and time for transfer of custody. If the inmate is awaiting federal trial or has federal civil proceedings pending, staff must clear the transfer through the U.S. Attorney.

(f) Institution staff shall determine from the state or local agency the names of the agents assuming custody. Staff must carefully examine the credentials of the agents assuming custody. In any doubtful case, verification should be sought.

(g) Transfers in civil cases pursuant to a writ of habeas corpus ad testificandum must be cleared through both the Regional Counsel and the Warden. Transfer ordinarily shall be recommended only if the case is substantial, where testimony cannot be obtained through alternative means such as depositions or interrogatories, and where security arrangements permit. Postponement of the production until after the inmate's release from federal custody will always be considered, particularly if release is within twelve months.

(h) Release of inmates classified as Central Inmate Monitoring Cases requires review with and/or coordination by appropriate authorities in accordance with the provisions of 28 CFR part 524, subpart F.

[46 FR 34549, July 1, 1981, as amended at 50 FR 40105, Oct. 1, 1985; 62 FR 13826, Mar. 24, 1997]

### Subpart E—Transfer of Offenders To or From Foreign Countries

SOURCE: 46 FR 59507, Dec. 4, 1981, unless otherwise noted.

#### § 527.40 Purpose and scope.

Public Law 95–144 (18 U.S.C. 4100 et seq.) authorizes the transfer of offenders to or from foreign countries, pursuant to the conditions of a current treat-

ty which provides for such transfer. 18 U.S.C. 4102 authorizes the Attorney General to act on behalf of the United States in regard to such treaties. In accordance with the provisions of 28 CFR 0.96b the Attorney General has delegated to the Director of the Bureau of Prisons, and to designees of the Director, the authority to receive custody of, and to transfer to and from the United States, offenders in compliance with the conditions of the treaty.

#### § 527.41 Definitions.

For the purpose of this rule the following definitions apply.

(a) *Treaty nation*. A country which has entered into a treaty with the United States on the Execution of Penal Sentences.

(b) *State prisoner*. An inmate serving a sentence imposed in a court in one of the states of the United States, or in a territory or commonwealth of the United States.

(c) *Departure institution*. The Bureau of Prisons institution to which an eligible inmate is finally transferred for return to his or her country of citizenship.

(d) *Admission institution*. The Bureau of Prisons institution where a United States citizen-inmate is first received from a treaty nation.

[46 FR 59507, Dec. 4, 1981, as amended at 58 FR 47976, Sept. 13, 1993]

#### § 527.42 Limitations on transfer of offenders to foreign countries.

(a) An inmate while in custody for civil contempt may not be considered for return to the inmate's country of citizenship for service of the sentence or commitment imposed in a United States court.

(b) An inmate with a committed fine may not be considered for return to the inmate's country of citizenship for service of a sentence imposed in a United States court without the permission of the court imposing the fine. When considered appropriate, the Warden may contact the sentencing court to request the court's permission to

## Bureau of Prisons, Justice

## § 527.45

process the inmate's application for return to the inmate's country of citizenship.

[48 FR 2502, Jan. 19, 1983. Redesignated at 58 FR 47976, Sept. 13, 1993]

### § 527.43 Notification of Bureau of Prisons inmates.

(a) The Warden shall ensure that the institution's admission and orientation program includes information on international offender transfers.

(b) The case manager of an inmate who is a citizen of a treaty nation shall inform the inmate of the treaty and provide the inmate with an opportunity to inquire about transfer to the country of citizenship. The inmate is to be given an opportunity to indicate on an appropriate form whether he or she is interested in transfer to the country of citizenship.

[46 FR 59507, Dec. 4, 1981. Redesignated at 58 FR 47976, Sept. 13, 1993]

### § 527.44 Transfer of Bureau of Prisons inmates to other countries.

(a) An inmate who is qualified for and desires to return to his or her country of citizenship for service of a sentence imposed in a United States Court shall indicate his or her interest by completing and signing the appropriate form and forwarding it to the Warden at the institution where the inmate is confined.

(b) Upon verifying that the inmate is qualified for transfer, the Warden shall forward all relevant information, including a complete classification package, to the Assistant Director, Correctional Programs Division.

(c) The Assistant Director, Correctional Programs Division, shall review the submitted material and forward it to the Office of Enforcement Operations (OEO), Criminal Division, International Prisoner Transfer Unit, Department of Justice, for review.

(d) The Assistant Director, Correctional Programs Division, shall ensure that the inmate is advised of the decision of OEO.

(1) When the Department of Justice determines that transfer is not appropriate, the Assistant Director, Correctional Programs Division, shall ensure that the inmate is advised of this determination and informed that the in-

mate may request the reason(s) for such action from OEO.

(2) When the Department of Justice determines that transfer is appropriate, the Assistant Director, Correctional Programs Division, shall ensure that the inmate is advised of the determination and of the probability that the inmate will be given an interview with his or her nation's consular officials.

(e) Upon notification from OEO of the treaty nation's decision in regard to the inmate's transfer, the Assistant Director, Correctional Programs Division, shall arrange for the inmate to be informed of that decision.

(f) At an appropriate time subsequent to notification by the Department of Justice of an inmate's approval for transfer, the Assistant Director shall arrange for the inmate to be transferred to an appropriate departure institution.

(g) Prior to the inmate's transfer from the departure institution, the inmate shall receive a verification hearing before a U.S. Magistrate Judge or U.S. District Court Judge to document the inmate's voluntary consent for transfer. Counsel is provided the inmate for purpose of this hearing. When requested, the Warden shall allow counsel to interview the inmate prior to the hearing.

(h) Following the verification hearing, the Assistant Director, Correctional Programs Division shall arrange a schedule for delivery of the inmate to the authorities of the country of citizenship.

(1) The Assistant Director shall advise the Warden of those arrangements.

(2) The Warden shall arrange for the inmate to be transported to the foreign authorities. The Warden shall assure that required documentation (for example, proof of citizenship and appropriate travel documents) accompanies each inmate transported.

[46 FR 59507, Dec. 4, 1981. Redesignated and amended at 58 FR 47976, Sept. 13, 1993]

### § 527.45 Transfer of State prisoners to other countries.

The Bureau of Prisons may assume custody of a state prisoner who has been approved for transfer to a treaty nation for the purpose of facilitating

**§ 527.46**

**28 CFR Ch. V (7–1–07 Edition)**

the transfer to the treaty nation. Once approved, the state is not required to contract for the placement of the prisoner in federal custody, nor to reimburse the United States for the cost of confinement (as would ordinarily be required by 18 U.S.C. 5003).

[46 FR 59507, Dec. 4, 1981. Redesignated at 58 FR 47976, Sept. 13, 1993]

**§ 527.46 Receiving United States citizens from other countries.**

(a) Staff accepting custody of American inmates from a foreign authority shall ensure that the following documentation is available prior to accepting custody of the inmate:

(1) A certified copy of the sentence handed down by an appropriate, competent judicial authority of the transferring country and any modifications thereof;

(2) A statement (and a copy translated into English from the language of the country of origin if other than English), duly authenticated, detailing the offense for which the offender was convicted, the duration of the sentence, and the length of time already served by the inmate. Included should be statements of credits to which the offender is entitled, such as work done, good behavior, pre-trial confinement, etc.; and

(3) Citizenship papers necessary for the inmate to enter the United States.

(b) The Assistant Director, Correctional Programs Division, shall direct, in writing, specific staff, preferably staff who speak the language of the treaty nation, to escort the offender from the transporting country to the admission institution. The directive shall cite 28 CFR 0.96b as the authority to escort the offender. When the admission institution is not able to accept the inmate (for example, a female inmate escorted to a male institution), the Warden shall make appropriate housing requirements with a nearby jail.

(c) As soon as practicable after the inmate's arrival at the admission institution, staff shall initiate the following actions:

(1) Arrange for the inmate to receive a complete physical examination;

(2) Advise the local U.S. Probation Office of the inmate's arrival; and

(3) Notify the U.S. Parole Commission of the inmate's arrival and projected release date.

(d) If upon computation of sentence staff determine that an inmate is entitled to immediate release via mandatory release or expiration of sentence with credits applied, release procedures shall be implemented but only after receiving a medical clearance and the results of an FBI fingerprint check.

[46 FR 59507, Dec. 4, 1981. Redesignated and amended at 58 FR 47976, 47977, Sept. 13, 1993; 62 FR 27872, May 21, 1997]